

APPENDIX A-F

MODEL REAL ESTATE LEASE
for
SECTION 1135 PROJECTS INVOLVING PROJECT LANDS

NO _____

DEPARTMENT OF THE ARMY LEASE

(PROJECT NAME)

(COUNTY/STATE)

THIS LEASE, made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and (NON-FEDERAL SPONSOR), hereinafter referred to as the Lessee.

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, as amended, and Section 1135(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and pursuant to Project Cooperation Agreement between the Department of the Army and the Local Sponsor/Lessee entered into on _____ (hereinafter referred to as "PCA"), attached hereto and referred to as Exhibit ____ and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for the implementation, operation, repair, replacement and rehabilitation of the Project Modification.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby granted for so long as the PCA remains in full force and effect.

2. CONSIDERATION

The consideration for this lease is the implementation, operation, repair, replacement and rehabilitation of the Project Modification and the maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

a. All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to _____, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division _____, or as may from time to time otherwise be directed in writing by the parties. Any notice, request, demand, or other communication required or permitted to be given under this lease shall be deemed to have been duly given if in writing and either delivered personally, or by telegram, or mailed by first-class, registered, or certified mail.

b. Any notice, request, demand, or other communication made pursuant to this Condition shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include its successors, employees and duly authorized representatives.

5. PROJECT MODIFICATION ACTIVITIES

a. The Lessee shall comply with the approved Ecosystem Restoration Report or other document ("Report") described in Article I of the PCA and the management and development activities described in the Report and in the OMRR&R Manual described in Article VIII of the PCA, both by this reference made a part hereof.

b. The Lessee's operation, management and other project modification activities are subordinate to the operation and management of the Existing Project, as defined in Article I of

the PCA. The Existing Project will have operational priority in any situation where a conflict arises.

c. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, and use of pesticides. In addition, the Lessee should comply with the specific directions and requirements contained in the OMRR&R Manual referenced in Article VIII of the PCA. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with the provisions of law cited in the granting clause.

b. The Lessee will provide an annual certification that all water systems on the premises, if any, have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

7. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

(INCLUDE THE FOLLOWING CONDITION, IF APPLICABLE):

8. AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES

a. The Lessee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where

feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. The Lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

9. TRANSFERS, ASSIGNMENTS

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the demised premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease. (INCLUDE THE FOLLOWING SENTENCE IF THE CONDITION ON AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES WAS INCLUDED ABOVE: Agreements covered by the condition on AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES are not subject to this condition.)

(THE FOLLOWING CONDITION ON ACCOUNTS, RECORDS AND RECEIPTS IS REQUIRED BY 16 USC 460d AND MUST BE INCLUDED IF THE SALE OF CROPS AS SET OUT IN THE CONDITION ON AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES AND/OR THE SALE OF TIMBER IS AUTHORIZED)

10. ACCOUNTS, RECORDS AND RECEIPTS

a. All monies received by the Lessee from the sale of timber or crops conducted on the premises may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits of the Lessee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of Lessee's employees who are directly engaged in such activities at

the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not subject to this condition.

11. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

(DELETE THE FOLLOWING CONDITION IF NO NAVIGABLE WATERS ARE WITHIN THE LEASED PREMISES OR NO LIGHTS AND SIGNALS WILL BE REQUIRED)

13. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

14. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom and restore the premises to the aforesaid condition with such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

15. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act (42 U.S.C. Sections 12101 et seq.) and attendant Americans with Disabilities Act Accessibility Guidelines (ADAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

16. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises provided that the proposed grantee of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

17. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

18. COMPLIANCE, CLOSURE, AND REVOCATION

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease and the PCA, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions of either the lease or the PCA and continues and persists in such violation. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, entry upon the premises for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project Modification, or revocation of the lease, after notice in writing of such intent.

b. This lease may be revoked by the Secretary, by giving thirty (30) days notice in writing in the manner described in the Condition on Notices of this lease, in the event the PCA is terminated pursuant to Article XIV of the PCA or the Secretary

determines that the premises identified in Exhibit(s) _____ are no longer required for the implementation, operation and maintenance of the Project Modification.

19. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean and safe condition.

b. In addition to the rights of revocation for noncompliance, the District Engineer, upon discovery of any hazardous conditions on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

(INCLUDE THE CONDITION, IF APPLICABLE):

20. PUBLIC USE

No attempt shall be made by the Lessee to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

21. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premise, except as may be authorized under and pursuant to the Report described in the condition on PROJECT MODIFICATION ACTIVITIES. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

(If the lease authorizes forest management, the lease will need modification to specifically allow timber sales and to state that timber sales shall follow an approved forest management plan.)

22. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provision of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph b.(2) below.

(1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

c. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

d. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

e. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of disputes resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph b.(2) of this clause, and executed in accordance with paragraph b.(3) of this clause.

f. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer received the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

g. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

23. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous

materials with the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged property. Lessee shall be considered the operator of the Project Modification for purposes of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601 -9675).

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

24. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared by the District Engineer which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition of RESTORATION.

25. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

26. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and

the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

27. HOLD HARMLESS

The Lessee shall hold and save the United States free from damages arising from the implementation, operation, maintenance, repair, replacement and rehabilitation (DELETE "repair, replacement and rehabilitation" if inapplicable), of the Project Modification, and any Project Modification-related betterments, and management of the premises and the facilities and improvements, except for damages due to the fault or negligence of the United States or its contractors.

28. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

29. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

30. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

31. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. Section 403), or Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

(INCLUDE A PROVISION IN THE LEASE USING THE SAME OR SIMILAR LANGUAGE AS THE PCA IF THE NON-FEDERAL SPONSOR/LESSEE IS AN INDIAN TRIBE).

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, _____.

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

Signed sealed
in the presence of:
